SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 600

HARRY E. HALLENBECK, RECEIVER OF SOUTH ASHLAND NATIONAL BANK, PETITIONER,

vs.

W. F. LEIMERT, RECEIVER OF CENTRAL MANUFACTURING DISTRICT BANK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1935.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Charles E. Woodward District Judge of the United States for the Northern District of Illinois, on Eighteenth day of December, in the year of our Lord one thousand nine hundred and Thirty-three, being one of the days of the regular December Term of said Court begun Monday the Eighteenth day of December, and of our Independence the 158th year. Placita.

Present:

Charles E Woodward.
H. C. W. Laubenheimer, U. S. Marshal.
Charles M. Bates, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES

Northern District of Illinois

Eastern Division

W. F. Leimert, Receiver of Central Manufacturing District Bank
vs.
Harry E. Hallenbeck, Receiver of South Ashland National Bank
} No. 41749

Be It Remembered, that the above-entitled action was commenced by the filing of the Declaration in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 9th day of February, 1933.

Mar. 10. 3 And on, to wit, the 10th day of March, 1933 there was filed in the Clerk's office of said Court a certain Summons with Marshal's Return endorsed thereon in words and figures following, to wit:

4 DISTRICT COURT OF THE UNITED STATES OF AMERICA

Northern District of Illinois

The President of the United States of America To the Marshal of the Northern District of Illinois—Greeting:

We Command You To Summon Harry E. Hallenbeck, Receiver of South Ashland National Bank if found in your District, to be and appear before our Judge of the District Court of the United States for the Northern District of Illinois, on the first day of the next Term thereof, to be holden at Chicago, in the District aforesaid, on the first Monday of March next, to answer unto W. F. Leimert, Receiver of Central Manufacturing District Bank, of a plea of trespass on the case upon promises, to his damages, as he alleges, of Fifteen Thousand Dollars ($15,000.00), and have you then and there this Writ.

Witness, the Hon. John P. Barnes, Judge of the District Court of the United States of America, at Chicago aforesaid, this 30th day of January, in the year of our Lord one

thousand nine hundred and 33 and of our Independence the 157th year.

(Seal) CHARLES M. BATES
Clerk.

Served this writ on the within named Harry E. Hallenbeck Rec. etc. by reading the same to him and by leaving a copy thereof with him in person this 1 day of March A. D. 1933

H. C. W. LAUBENHEIMER,
U. S. Marshal
by THOS. E. GAVIN
Deputy

Marshal's Fees		
1	Services	$2.00
10	Miles	.60
	Total	2.60

5 And on, to wit, the 7th day of April, 1933 came the Plaintiff by his attorneys and filed in the Clerk's office of said Court a certain Amended Declaration in words and figures following, to wit: Filed Apr. 1933.

6 (Caption)

AMENDED DECLARATION.

W. F. Leimert, Receiver of Central Manufacturing District Bank, a banking institution organized under and by virtue of the laws of the State of Illinois, by Winston, Strawn & Shaw, his attorneys, complains of Harry E. Hallenbeck, Receiver of the South Ashland National Bank, a national banking association, who is a citizen of the State of Illinois, residing in the City of Chicago, and who is a resdent of the Eastern Division of the Northern District of Illinois aforesaid, of a plea that he render to the plaintiff the sum of Fifteen Thousand Dollars ($15,000) which he owes and unjustly detains from the plaintiff.

Plaintiff further represents that on the 4th day of August, 1932, he was appointed Receiver of the Central Manufacturing District Bank by Oscar Nelson, Auditor of Public Accounts of the State of Illinois, and thereafter, on the 6th day of August, 1932, in a case entitled, "People of the State of Illinois, ex rel Oscar Nelson, Auditor of Public Ac-

counts of the State of Illinois vs. Central Manufacturing District Bank," In Chancery No. B-247280, in the Circuit Court of Cook County, the appointment of plaintiff as Receiver was confirmed by the Circuit Court of Cook County; that on the 27th day of June, 1932, the Comptroller of Currency of the United States of America appointed the defendant, Harry E. Hallenbeck, Receiver of the South Ashland National Bank under the laws of the United States of America, and the said Harry E. Hallenbeck, since said date, has been and is now the duly qualified and acting Receiver of said bank, engaged in its liquidation.

I.

Plaintiff represents that on the 26th day of March, 1932, one James E. Hodgkinson, as Vice-President of Hodgkinson & Durfee, Inc., a corporation, drew its certain check upon the Central Manufacturing District Bank in the amount of Three Thousand Dollars ($3,000), payable to the South Ashland National Bank, and on, to-wit, said date, delivered the said check to the said South Ashland National Bank, a copy of said check being attached hereto, marked Exhibit "A" and made a part hereof.

Plaintiff further represents that thereafter, on to-wit, the 23rd day of April, 1932, the said South Ashland National Bank deposited said check with the Federal Reserve Bank of Chicago for clearance against the account in that bank of the Central Manufacturing District Bank; that on, to-wit, April 25, 1932, said Federal Reserve Bank of Chicago charged the amount of said check against the account of the Central Manufacturing District Bank, and then and there credited the amount thereof to said South Ashland National Bank; thereafter, on to-wit, said date, the said Federal Reserve Bank of Chicago delivered said check to the Central Manufacturing District Bank.

8 Plaintiff further represents that on said 25th day of April, 1932, said Hodgkinson & Durfee, Inc. had no funds on deposit with the Central Manufacturing District Bank to cover the amount of said check aforesaid; that on said 25th day of April, 1932, the Central Manufacturing District Bank advised the said James E. Hodgkinson, who was then and there a Vice-President of the said South Ashland National Bank, that there were no funds in the account of Hodgkinson & Durfee, Inc. to cover the amount of said check, and that the check would, therefore, be dishonored; that on the morning of April 26, 1932, said check was pre-

sented on behalf of the Central Manufacturing District Bank to the cashier of the South Ashland National Bank and demand made on said South Ashland National Bank that it reimburse the Central Manufacturing District Bank for the amount that had been been charged to its account through the Federal Reserve Bank of Chicago aforesaid; and the said South Ashland National Bank being so indebted then and there promised to pay the amount thereof to the Central Manufacturing District Bank; but the said South Ashland National Bank, through its officers, then and there refused so to do and continued so to do thereafter, until the appointment of the defendant as Receiver. Plaintiff further represents that since the appointment of said Hallenbeck as Receiver of said South Ashland National Bank, plaintiff has filed his claim with said Receiver, demanding the payment of the amount of said check aforesaid, but the said defendant has refused to allow the amount of said claim and continues so to do. To the damage of the plaintiff in the sum of Fifteen Thousand Dollars ($15,000), and therefore he brings this suit.

9 II.

Plaintiff represents that on the 26th day of March, 1932, one James E. Hodgkinson, as Vice-President of Hodgkinson & Durfee, Inc., a corporation, drew its certain check upon the Central Manufacturing District Bank in the amount of Two Thousand Six Hundred Dollars ($2,600), payable to the South Ashland National Bank, and on, to-wit, said date, delivered the said check to the said South Ashland National Bank, a copy of said check being attached hereto, marked Exhibit "B" and made a part hereof.

Plaintiff further represents that thereafter, on to-wit, the 23rd day of April, 1932, the said South Ashland National Bank deposited said check with the First National Bank of Chicago for clearance against the account in that bank of the Central Manufacturing District Bank; that on, to-wit, April 25, 1932, said First National Bank of Chicago charged the amount of said check against the account of the Central Manufacturing District Bank, and then and there credited the amount thereof to said South Ashland National Bank; thereafter, on to-wit, said date, the said First National Bank of Chicago delivered said check to the Central Manufacturing District Bank.

Plaintiff further represents that on said 25th day of April, 1932, said Hodgkinson & Durfee, Inc. had no funds

on deposit with the Central Manufacturing District Bank to cover the amount of said check aforesaid; that on said 25th day of April, 1932, the Central Manufacturing District Bank advised the said James E. Hodgkinson, who was then and there a Vice-President of the said South Ashland National Bank, that there were no funds in the account of Hodgkinson & Durfee, Inc. to cover the amount of said check, and that the check would, therefore, be dishonored; that on the morning of April 26, 1932, said check was presented on behalf of the Ceneral Manufacturing District Bank to the cashier of the South Ashland National Bank and demand made on said South Ashland National Bank that it reimburse the Central Manufacturing District Bank for the amount that had been charged to its account through the First National Bank of Chicago aforesaid; and the said South Ashland National Bank being so indebted then and there promised to pay the amount thereof to the Central Manufacturing District Bank; but the said South Ashland National Bank, through its officers, then and there refused so to do and continued so to do thereafter, until the appointment of the defendant as Receiver. Plaintiff further represents that since the appointment of said Hallenbeck as Receiver of said South Ashland National Bank, plaintiff has filed his claims with said Receiver, demanding the payment of the amount of said check aforesaid, but the said defendant has refused to allow the amount of said claim and continues so to do. To the damage of the plaintiff in the sum of Fifteen Thousand Dollars ($15,000), and therefore he brings this suit.

III.

Plaintiff represents that on the 26th day of March, 1932, one James E. Hodgkinson, as Vice-President of Hodgkinson & Durfee, Inc., a corporation, drew its certain check upon the Central Manufacturing District Bank in the amount of Four Thousand Eight Hundred Seventy-two and 12/100 Dollars ($4,872.12), payable to the South Ashland National Bank, and on, to-wit, said date, delivered the said check to the said South Ashland National Bank, a copy of said check being attached hereto, marked Exhibit "C" and made a part hereof.

Plaintiff further represents that thereafter, on to-wit, the 23rd day of April, 1932, the said South Ashland National Bank deposited said check with the Federal Re-

serve Bank of Chicago for clearance against the account in that bank of the Central Manufacturing District Bank; that on, to-wit, April 25, 1932, said Federal Reserve Bank of Chicago charged the amount of said check against the account of the Central Manufacturing District Bank, and then and there credited the amount thereof to said South Ashland National Bank; thereafter, on to-wit, said date, the said Federal Reserve Bank of Chicago delivered said check to the Central Manufacturing District Bank.

Plaintiff further represents that on said 25th day of April, 1932, said Hodgkinson & Durfee, Inc., had no funds on deposit with the Central Manufacturing District Bank to cover the amount of said check aforesaid; that on said 25th day of April, 1932, the Central Manufacturing District Bank advised the said James E. Hodgkinson, who was then and there a Vice-President of the said South Ashland National Bank, that there were no funds in the account of Hodgkinson & Durfee, Inc. to cover the amount of said check, and that the check would, therefore, be dishonored; that on the morning of April 26, 1932, said check was presented on behalf of the Central Manufacturing Manufacturing District Bank to the cashier of the South Ashland National Bank and demand made on said South Ashland National Bank that it reimburse the Central Manufacturing District Bank for the amount that had been charged to its account through the Federal Reserve Bank of Chicago aforesaid; and the said South Ashland National Bank being so indebted then and there promised to pay the amount thereof to the Central Manufacturing District Bank; but the said South Ash-
12 land National Bank, through its officers, then and there refused so to do and continued so to do thereafter, until the appointment of the defendant as Receiver. Plaintiff further represents that since the appointment of said Hallenbeck as Receiver of said South Ashland National Bank, plaintiff has filed his claim with said Receiver, demanding the payment of the amount of said check aforesaid, but the said defendant has refused to allow the amount of said claim and continues so to do. To the damage of the plaintiff in the sum of Fifteen Thousand Dollars ($15,000), and therefore he brings this suit.

IV.

Plaintiff represents that on the 26th day of March, 1932, one James E. Hodgkinson, as Vice-President of Hodgkinson & Durfee, Inc., a corporation, drew its certain check

upon the Central Manufacturing District Bank in the amount of One Thousand Seven Hundred Eleven and 80/100 Dollars ($1,711.80), payable to the South Ashland National Bank, and on, to-wit, said date, delivered the said check to the South Ashland National Bank, a copy of said check being attached hereto, marked Exhibit "D" and made a part hereof.

Plaintiff further represents that thereafter, on to-wit, the 23rd day of April, 1932, the said South Ashland National Bank deposited said check with the Federal Reserve Bank of Chicago for clearance against the account in that bank of the Central Manufacturing District Bank; that on, to-wit, April 25, 1932, said Federal Reserve Bank of Chicago charged the amount of said check against the account of the Central Manufacturing District Bank, and then and
13 there the amount thereof to said South Ashland National Bank; thereafter, on to-wit, said date, the said Federal Reserve Bank of Chicago delivered said check to the Central Manufacturing District Bank.

Plaintiff further represents that on said 25th day of April, 1932, said Hodgkinson & Durfee, Inc. had no funds on deposit with the Central Manufacturing District Bank to cover the amount of said check aforesaid; that on said 25th day of April, 1932, the Central Manufacturing District Bank advised the said James E. Hodgkinson, who was then and there a Vice-President of the said South Ashland National Bank, that there were no funds in the account of Hodgkinson & Durfee, Inc. to cover the amount of said check, and that the check would, therefore, be dishonored; that on the morning of April 26, 1932, said check was presented on behalf of the Central Manufacturing District Bank to the cashier of the South Ashland National Bank and demand made on said South Ashland National Bank that it reimburse the Central Manufacturing District Bank for the amount that had been charged to its account through the Federal Reserve Bank of Chicago aforesaid; and the said South Ashland National Bank being so indebted then and there promised to pay the amount thereof to the Central Manufacturing District Bank; but the said South Ashland National Bank, through its officers, then and there refused so to do and continued so to do thereafter, until the appointment of the defendant as Receiver. Plaintiff further represents that since the appointment of said Hallenbeck as Receiver of said South Ashland National Bank, plaintiff has filed his claim with said Receiver, demanding the payment of the

amount of said check aforesaid, but the defendant has refused to allow the amount of said claim and continues so
14 to do. To the damage of the plaintiff in the sum of Fifteen Thousand Dollars ($15,000), and therefore he brings this suit.

V.

Plaintiff represents that on the 23rd day of April, 1932, one James E. Hodgkinson, as Vice-President of Hodgkinson & Durfee, Inc., a corporation, drew its certain check upon the Central Manufacturing District Bank in the amount of One Thousand Five Hundred Fifty Dollars ($1,550), payable to J. G. Hodgkinson and which was endorsed by him and who, on to-wit, said date, delivered the said check to the said South Ashland National Bank a copy of said check being attached hereto, marked Exhibit "E" and made a part hereof.

Plaintiff further represents that on, to-wit, the 23rd day of April, 1932, the said South Ashland National Bank deposited said check with the Federal Reserve Bank of Chicago for clearance against the account in that bank of the Central Manufacturing District Bank; that on, to-wit, April 25, 1932, said Federal Reserve Bank of Chicago charged the amount of said check against the account of the Central Manufacturing District Bank, and then and there credited the amount thereof to said South Ashland National Bank; thereafter, on to-wit, said date, the said Federal Reserve Bank of Chicago delivered said check to the Central Manufacturing District Bank.

Plaintiff further represents that on said 25th day of April, 1932, said Hodgkinson & Durfee, Inc. had no funds on deposit with the Central Manufacturing District Bank to cover the amount of said check aforesaid; that on said 25th day of April, 1932, the Central Manufacturing District Bank
15 advised the said James E. Hodgkinson, who was then and there a Vice-President of the said South Ashland National Bank, that there were no funds in the account of Hodgkinson & Durfee, Inc. to cover the amount of said check, and that the check would, therefore, be dishonord; that on the morning of April 26, 1932, said check was presented on behalf of the Central Manufacturing District Bank to the cashier of the South Ashland National Bank and demand made on said South Ashland National Bank that it reimburse the Central Manufacturing District Bank for the amount that had been charged to its account through the Federal

Reserve Bank of Chicago aforesaid; and the said South Ashland National Bank being so indebted then and there promised to pay the amount thereof to the Central Manufacturing District Bank; but the said South Ashland National Bank, through its officers, then and there refused to to do and continued so to do thereafter, until the appointment of the defendant as Receiver. Plaintiff further represents that since the appointment of said Hallenbeck as Receiver of said South Ashland National Bank, plaintiff has filed his claim with said Receiver, demanding the payment of the amount of said check aforesaid, but the said defendant has refused to allow the amount of said claim and continues so to do. To the damage of the plaintiff in the sum of Fifteen Thousand Dollars ($15,000), and therefore he brings this suit.

WINSTON STRAWN & SHAW
Attorneys for Plaintiff.

16 State of Illinois } ss.
County of Cook }

JAMES M. HOPKINS, JR., being duly duly sworn, on oath deposes and says that he is the agent in this behalf of W. F. Leimert, Receiver of the Central Manufacturing District Bank, plaintiff in the above entitled cause; that plaintiff's claim is based on five (5) checks totaling Thirteen Thousand Seven Hundred Thirty-three Dollars (13,733), drawn on the Central Manufacturing District Bank and delivered to the South Ashland National Bank (for which the defendant is acting as Receiver), and which said checks were paid to the South Ashland National Bank through clearing house banks from the funds of the Central Manufacturing District Bank at a time when the drawer of said checks had no funds on deposit with the Central Manufacturing District Bank to pay the amount thereof; that on the date said checks were presented to the Central Manufacturing District Bank, the South Ashland National Bank was notified that there were not sufficient sums to cover said checks and demanded the repayment thereof; that demand was also made upon the South Ashland National Bank on the morning following the afternoon on which said checks were presented to the Central Manufacturing District Bank, but that the repayment of the amount so paid to the South Ashland National Bank was, and has been continuously thereafter refused; that there is due and owing from defendant to the plaintiff,

after allowing the defendant all just credits, deductions and set-offs, the sum of Thirteen Thousand Seven Hundred Thirty-three Dollars ($13,733).

Further affiant sayeth not.

JAMES M. HOPKINS JR.

Subscribed and Sworn to before me this 6th day of April, A. D. 1933.

MAE E. BURGESS
Notary Public.

(Seal)

Copy

17 EXHIBIT A

Hodgkinson & Durfee
Incorporated
Insurance
175 West Jackson Blvd.

No. 11092
Chicago, March 26th 1932

Pay to the order of South Ashland Nat. Bank $3000.00
Three thousand dollars.....

HODGKINSON & DURFEE, INC.
JAMES E. HODGKINSON
Vice President

Central Manufacturing
District Bank
2-215 Chicago, Illinois 2-215

Endorsements:

Pay to the order of any bank or banker prior endorsements guaranteed Apr 25 1932 Federal Reserve Bank of 2-30 Chicago 2-30

Pay to the order of Federal Reserve Bank of Chicago (All Prior Endorsements Guaranteed) Apr 23, 1932 South Ashland National Bank 2-404 of Chicago, Ill. 2-404 Guy Brown, Cashier

18 EXHIBIT B

Hodgkinson & Durfee
Incorporated
Insurance
175 West Jackson Blvd.

No. 11093
Chicago, March 26th, 1932
Pay to the order of South Ashland Nat. Bank $2600.00
Twenty six hundred.....

HODGKINSON & DURFEE, INC.
JAMES E. HODGKINSON
Vice President

Central Manufacturing
District Bank
2-215 Chicago, Illinois 2-215
Endorsements:
First National Bank of Chicago Apr 25 1932 A. M.
Pay to the order of First National Bank Chicago All prior Endorsements Guaranteed South Ashland National Bank 2-404 Chicago, Ill. 2-404

19 EXHIBIT C

Hodgkinson & Durfee
Incorporated
Insurance
175 West Jackson Blvd.

No. 11091
Chicago, March 26th 1932
Pay to the order of South Ashland Nat. Bank $4872.12
Forty eight hundred & seventy-two dollars & twelve cents

HODGKINSON & DURFEE, INC.
JAMES E. HODGKINSON
Vice President

Central Manufacturing
District Bank
2-215 Chicago, Illinois 2-215
Endorsements:
Pay to the order of any bank or banker prior endorsements guaranteed Apr 25 1932 Federal Reserve Bank of Chicago 2-30 Chicago 2-30
Pay to the order of Federal Reserve Bank of Chicago (All Prior Endorsements Guaranteed) South Ashland National Bank 2-404 of Chicago, Ill. 2-404 Guy Brown, Cashier

20 EXHIBIT D.

Hodgkinson & Durfee
Incorporated
Insurance
175 West Jackson Blvd.

No. 11090
Chicago, March 26th, 1932
Pay to the order of South Ashland Nat. Bank $1711.80
Seventeen hundred and eleven dollars eighty
HODGKINSON & DURFEE, INC.
JAMES E. HODGKINSON
Vice President

Central Manufacturing
District Bank
2-215 Chicago, Illinois 2-215
Pay to the order of any bank or banker prior endorsements guaranteed Apr 25 1932 Federal Reserve Bank of Chicago 2-30 Chicago 2-30
Pay to the order of Federal Reserve Bank of Chicago (All Prior Endorsements Guaranteed) South Ashland National Bank 2-404 of Chicago, Ill. 2-04 Guy Brown, Cashier

21 EXHIBIT E.

Hodgkinson & Durfee
Incorporated
Insurance
175 West Jackson Blvd.

No. 11089
Chicago, April 23rd 1932
Pay to the order of J. G. Hodgkinson.....$1550.00
Fifteen hundred & fifty.....Dollars
HODGKINSON & DURFEE, INC.
JAMES E. HODGKINSON
Vice President

Central Manufacturing
District Bank
2-215 Chicago, Illinois 2-215
Endorsements:
J. E. Hodgkinson Pay to the order of any bank or banker prior endorsements guaranteed Apr 25 1932 Federal Reserve Bank of Chicago 2-30 Chicago 2-30
Pay to the order of Federal Reserve Bank of Chicago

(All Prior Endorsements Guaranteed) Apr 23 1932 South Ashland National Bank 2-404 of Chicago, Ill. 2-404 Guy Brown, Cashier.

Charles M. Bates Clerk.

(Endorsed) • • (Caption) • • Amended Declaration Filed Apr. 7 1933 Charles M. Bates Clerk Winston, Strawn & Shaw Attorneys at Law. Telephone Cen 4363 First National Bank Building Chicago.

Apr. 17. 23 And on, to wit, the 17th day of April, 1933, came the Defendant by his attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to-wit:

24 • • (Caption) • •

ANSWER.

And the Defendant, Harry E. Hallenbeck, Receiver of the South Ashland National Bank, by Ashcraft & Ashcraft, his attorneys, comes and defends the wrong and injury, when, etc., and says that he did not promise in manner and form as the plaintiff has above thereof complained against him and of this he puts himself upon the country, etc.

ASHCRAFT & ASHCRAFT,
Attorneys for Defendant.

25 State of Illinois, } ss.
County of Cook. }

RUSSELL F. LOCKE, being first duly sworn, on oath, deposes and says that he is the agent in this behalf of Harry E. Hallenbeck, Receiver of South Ashland National Bank, defendant in the above entitled cause: that the five checks, totalling Thirteen Thousand Seven Hundred Thirty-three Dollars ($13,733.00), drawn on the Central Manufacturing District Bank and delivered to the South Ashland National Bank, were delivered to the South Ashland National Bank and received by the South Ashland National Bank for a valuable consideration; that said checks were accepted by Central Manufacturing District Bank and paid by the said Central Manufacturing District Bank; that the said South Ashland National Bank, at the time said checks were presented for

payment by it to the Central Manufacturing District Bank, were not notified that there were not sufficient sums to cover said checks; that the said South Ashland National Bank had no knowledge, when the said checks were presented to the Central Manufacturing District Bank and paid by the Central Manufacturing District Bank, that the drawer of said checks had then no funds on deposit with the Central Manufacturing District Bank to pay the amount thereof; that there is not due and owing from the defendant to the plaintiff the sum of Thirteen Thousand Seven Hundred Thirty-three Dollars ($13,733.00), or any other sum whatsoever; that the South Ashland National Bank and the defendant, or either of them, has never promised to pay the amount of said
26 checks or any other sum whatsoever, to the Central Manufacturing District Bank.'

Further, affiant sayeth not.

RUSSELL F. LOCKE.

Subscribed and sworn to before me this 17th day of April, A. D. 1933.

(Seal)

ESTHER V. JOHNSON,
Notary Public.

27 And afterwards, to wit, on the 13th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to-wit:

Filed 1933.

Findings of Fact and Conclusions of Law.

28 • • (Caption) • •

THE FACTS:

This is a suit by the receivers of two banks, both located in the City of Chicago. The plaintiff is the receiver of the Central Manufacturing District Bank, hereinafter referred to as "The Central Bank." The defendant is the receiver of the South Ashland National Bank, hereinafter referred to as "The Ashland Bank." James E. Hodgkinson was, during March and April, 1932, a vice president of Hodgkinson & Durfee, Inc., hereinafter referred to as the corporation. Hodgkinson was also vice president, a director and the owner

of one-fourth (500 shares) of the capital stock of the Ashland Bank. The corporation maintained an account at the Central Bank. On March 26, 1932, Hodgkinson drew four checks of the corporation aggregating $12,183.92 on the Central Bank, payable to the order of the Ashland Bank and, on that date, delivered the checks to the Ashland Bank. On April 23, 1933, Hodgkinson drew the check of the corporation upon the Central Bank for $1,550.00, payable to Hodgkinson personally and on the same date he delivered the check by him endorsed to the Ashland Bank.

During the entire month of April, 1932, the Federal Reserve Bank of Chicago and the First National Bank of Chicago were regular members of the Chicago Clearing House Association and the Central Bank was an affiliated member of the association. The Ashland Bank was neither a member of nor affiliated with the Chicago Clearing House Association. The four checks, dated March 26, 1932, and aggregating $12,183.92 were carried on the books of the Ashland Bank as the assets of that bank. On Saturday, April 23, 1932, four of these checks were deposited by the Ashland Bank in the Federal Reserve Bank of Chicago and the fifth check (in the amount of $2600.00) was forwarded to the First National Bank of Chicago for collection. Nothing further happened to these checks until Monday morning, April 25, 1932. Early on Monday morning the four checks sent to the Federal Reserve Bank for collection were turned in to the Chicago Clearing House Association by the Federal Reserve Bank. In accordance with the rules and practices of the clearing house the Central Bank, by its check, paid the amount of this check and took checks to the Federal Reserve Bank of Chicago. On the same day and before 11:30 A. M. the messenger of the Chicago Clearing House Association delivered to the Central Bank the four checks in question. It was some time after noon, several hours after its "clearing house balance" had been settled before any one in the Central Bank learned that the payment of these four checks would create an overdraft in the corporation's account. On that day the corporation had a balance in the Central Bank of $9.85.

The check for $2600.00 was deposited for collection by the Ashland Bank in the First National Bank of Chicago and never was presented at the clearing house. The First National Bank carried an account of the Central Bank as well as one for the Ashland Bank. Instead of sending this check to the clearing house it charged the amount of this check to the Central Bank and credited it to the account of the Ash-

land Bank. This check was then sent out by messenger to the Central Bank and arrived there some time after noon. When the Central Bank learned, of the overdraft that had been caused in the corporation's account, if these five checks were paid, the Central Bank notified Hodgkinson and before the close of business on the next day—in fact by 9:30 in the morning of the next day—the Central Bank returned the checks to the Ashland Bank and demanded reimbursement. This was refused by the Ashland Bank. The Ashland Bank itself got and kept all of the proceeds of these five checks.

On April 23, 1932, a rule of the Chicago Clearing House (Rule 14) was in force which, so far as pertinent, reads as follows:

"In order that the member banks presenting such items may have an opportunity to give special instructions as to the protest of unpaid items, that notice of non-payment of any such items drawn on banks * * * which are * * * affiliated with members of the association * * * and which have their places of business located * * * on 12th Street or south thereof, be given by telephone before two-thirty o'clock (2:30) P. M. of the same day to the member banks presenting such items through the Clearing House * * *"

31 The defendant maintains as an affirmative defense that there was an agreement by the Central Bank to permit overdrafts of the corporation or to make a loan to the corporation.

Frank L. Webb was executive vice president, Harold P. Johnson was assistant vice president and Thomas Kekich was assistant cashier and auditor during March and April, 1932, of the Central Bank.

James E. Hodgkinson testified that on March 26, 1932, he had a conversation with Webb at the depositors bank of which he was receiver in which he told Webb that he, Hodgkinson, would need $15,000.00 and that Webb said that he would make the loan in the Central Bank and that Hodgkinson could issue checks against it. Between that date and April 22, 1932, Hodgkinson seems to have had several conversations with Webb but nothing definite concerning the loan. On Friday, April 22, 1932, Hodgkinson testified that he had a telephone conversation with Webb in which he told Webb that the checks payable to the Ashland Bank on the Central Bank were going through and that he, Webb, would have to make the loan that day. Webb replied, "Well, you go out to the stock yards and see the boys and get it fixed up, that will take care of you." He also testifies that on the same day he had a con-

versation with Johnson in the Central Bank in which he told Johnson that the checks were going through and in which he discussed the collateral that Johnson wanted for the loan.

He further testified that he gave Johnson 99 shares of the
32 Ashland Bank stock which Johnson put in his pocket. This stock, according to Hodgkinson, was to go as collateral to the loan. On Saturday, April 23, 1932, Hodgkinson testifies that he had a conversation with Johnson and Kekich at the Bank in which he discussed the checks coming through and brought the rest of the collateral out and showed it to Johnson and Kekich. Neither Johnson nor Kekich stated they would not make the loan. Hodgkinson testifies that on Monday, April 25, 1932, he called Webb at the Terminal Bank and told him the checks were at the Central Bank to which Webb said, "Go out there and fix it up with the boys." About one o'clock on that day (Monday) Hodgkinson testifies that he went to the Central Bank with his brother, Francis, where he talked with Johnson and Kekich about the collateral for the loan. In that conversation he was not told that the loan would not be made. Webb, Johnson and Kekich, categorically, deny the substance of the testimony of Hodgkinson in so far as their activities are concerned.

CONCLUSION:

Upon the above and foregoing statement of facts, the court concludes:

(1) The checks in question were not paid by the Central Bank on April 23, 1932.

(2) The action of the First National Bank in charging the account of the Central Bank and in crediting the account of the Ashland Bank with the proceeds of the check of $2600.00 did not constitute payment of said check.

33 (3) The notice given by the Central Bank to the Ashland Bank on Monday, April 25, 1932, was in compliance with Section 102 of the Negotiable Instruments Law and fixed the liabilities of the Ashland Bank to reimburse the Central Bank for the amount of the checks.

(4) The Central Bank did not agree with James E. Hodgkinson to make a loan of $15,000.00 or any other sum, either to Hodgkinson personally, or to Hodgkinson & Durfee, Inc., and did not agree to honor the overdrafts either of Hodgkinson personally, or of Hodgkinson & Durfee, Inc.

(5) The court finds the issues for the plaintiff.

(6) Judgment should be entered in favor of the plaintiff

and against the defendant in the sum of $_____ and costs of suit.

Enter:

CHARLES E. WOODWARD,
Judge.

Dated December 13, 1933.

43 And afterwards, to wit, on the 16th day of February, 1934, nunc pro tunc as of December 13, 1933, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

Filed Fe 1934, n pro tu of Dec 1933.

Findings of Fact and Conclusions of Law.

44 * * (Caption) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This Cause Coming on to Be Heard before the undersigned Judge of the above named court, sitting as Judge of Law and Fact, a jury having been waived and it being stipulated between the parties hereto that the decision to be made herein should be predicated upon special findings of fact which the court is requested to make, and the court, upon due consideration of the competent evidence herein and the stipulation of the parties hereto, does find the facts to be as follows:

1. The plaintiff is the Receiver of the Central Manufacturing District Bank and the defendant is the Receiver of the South Ashland National Bank.

2. One James G. Hodgkinson was, during the months of March and April, A. D. 1932, a vice president of a corporation of the name, Hodgkinson & Durfee, Inc., Hodgkinson was also vice president and director and owner of one-fourth of the capital stock of the South Ashland National Bank.

45 3. The corporation, Hodgkinson & Durfee, Inc., maintained an account at the Central Manufacturing District Bank.

4. On March 26, 1932, James G. Hodgkinson drew four checks of the corporation, Hodgkinson & Durfee, Inc., aggregating Twelve Thousand One Hundred Eighty-three and 92/100ths Dollars ($12,183.92), on the Central Manufacturing

District Bank, payable to the order of the South Ashland National Bank, and on that date delivered the checks to the said South Ashland National Bank. On April 23, 1932, James G. Hodgkinson drew the check of the corporation, Hodgkinson & Durfee, Inc., upon the Central Manufacturing District Bank for One Thousand Five Hundred Fifty Dollars ($1,550.00) payable to the said Hodgkinson, personally, and on the same date Hodgkinson delivered the check, by him endorsed, to the South Ashland National Bank.

5. During the entire month of April, 1932, the Federal Reserve Bank of Chicago and the First National Bank of Chicago were regular members of the Chicago Clearing House Association, and the Central Manufacturing District Bank was an affiliate member of the Association. The South Ashland National Bank was neither a member of, nor affiliated with, the Chicago Clearing House Association.

6. The four checks drawn by Hodgkinson, dated March 26, 1932, and aggregating Twelve Thousand One Hundred Eighty-three and 92/100ths Dollars ($12,183.92), were 46 carried on the books of the South Ashland National Bank as assets of that bank.

7. On Saturday, April 23, 1932, four of these checks were deposited by the South Ashland National Bank in the Federal Reserve Bank of Chicago and the fifth check, in the amount of Two Thousand Six Hundred Dollars ($2,600.00), was forwarded to the First Natioinal Bank of Chicago for collection. Nothing further happened to these checks until Monday morning, April 25, 1932.

8. Early on Monday morning, the four checks sent to the Federal Reserve Bank for collection were turned in to the Chicago Clearing House Association by the Federal Reserve Bank, and in accordance with the rules and practices of the Chicago Clearing House Association, the Central Manufacturing District Bank, by its check, paid the amount of these checks and took its check to the Federal Reserve Bank of Chicago, and on the same day and before 11:30 o'clock A. M., the messenger of the Chicago Clearing House Association delivered to the Central Manufacturing District Bank the four checks in question.

9. It was some time after noon, several hours after its "Clearing House Balance" had been settled, before anyone in the Central Manufacturing District Bank learned that the payment of these four checks would create an overdraft in the account of Hodgkinson & Durfee, Inc., because on that day Hodgkinson & Durfee, Inc., had a balance in the Central

Manufacturing District Bank of Nine and 85/100ths Dollars ($9.85).

10. The check for Two Thousand Six Hundred Dol-
47 lars ($2,600.00) was deposited for collection by the South Ashland National Bank in the First National Bank of Chicago and never presented at the Chicago Clearing House Association.

11. The First National Bank of Chicago carried an account of the Central Manufacturing District Bank as well as an account for the South Ashland National Bank.

12. Instead of sending this check to the Chicago Clearing House Association, the First National Bank of Chicago charged the amount of this check to the Central Manufacturing District Bank and credited to the account of the South Ashland National Bank and the check so charged to the Central Manufacturing District Bank was then sent by messenger to the Central Manufacturing District Bank and arrived there some time after noon on the same day.

13. When the Central Manufacturing District Bank learned of the overdraft that had been caused in the account of Hodgkinson & Durfee, Inc., if these five checks were paid, the Central Manfacturing District Bank notified Hodgkinson.

14. At 9:30 o'clock A. M. of the next day, the Central Manufacturing District Bank returned the checks to the South Ashland National Bank and demanded reimbursement which was refused by the South Ashland National Bank.

15. The South Ashland National Bank got and kept all of the proceeds of these five checks.

16. On April 23, 1932, a rule of the Chicago Clearing
48 House Association (Rule 14) was in force, which, so far as pertinent, reads as follows:

"In order that the member banks presenting such items may have an oppoprtunity to give special instructions as to the protest of unpaid items, that notice of non-payment of any such items drawn on banks * * * which are * * * affiliated with members of the association * * * and which have their places of business located * * * on 12th Street, or south thereof, be given by telephone before two-thirty o'clock (2:30) P. M. of the same day to the member banks presenting such items through the Clearing House * * *."

17. Frank L. Webb was executive vice president, Harold P. Johnson was assistant vice president and Thomas Kekich was assistant cashier and auditor during March and April, 1932, of the Central Manufacturing District Bank.

18. The Central Manufacturing District Bank did not

agree with James G. Hodgkinson to make a loan of Fifteen Thousand Dollars ($15,000.00) or any other sum, either to Hodgkinson, personally, or to Hodgkinson & Durfee, Inc., and did not agree to honor the overdrafts either of Hodgkinson, personally, or of Hodgkinson & Durfee, Inc.

CONCLUSIONS OF LAW.

The court finds and declares the following conclusions of law upon the foregoing facts:

1. The checks in question were not paid by the Central Manufacturing District Bank on April 23, 1932.
2. The action of the First National Bank of Chicago in charging the account of the Central Manufacturing Dis-
49 trict Bank and in crediting the account of the South Ashland National Bank with the proceeds of the check of Two Thousand Six Hundred Dollars ($2,600.00) did not constitute payment of said check.
3. The notice given by the Central Manufacturing District Bank to the South Ashland National Bank on Monday, April 25, 1932, was in compliance with Section 102 of the Negotiable Instruments Law and fixed the liability of the South Ashland National Bank to reimburse the Central Manufacturing District Bank for the amount of the checks.
4. The Central Manufacturing District Bank did not agree with James G. Hodgkinson to make a loan of Fifteen Thousand Dollars ($15,000.00) or any other sum, either to Hodgkinson, personally, or to Hodgkinson & Durfee, Inc., and did not agree to honor the overdrafts either of Hodgkinson, personally, or of Hodgkinson & Durfee, Inc.
5. The Court finds the issues for the plaintiff.
6. Judgment should be entered in favor of the plaintiff and against the defendant in the sum of Fourteen Thousand Eight Hundred Sixty-four and 56/100ths Dollars ($14,864.56) and costs of suit.

The defendant's several exceptions to each and all of the foregoing conclusions of law declared by the court are severally noted.

The above is hereby ordered to be filed nunc pro tunc as of December 13th, 1933, and made a part of the record of this cause.

Enter:

CHARLES E. WOODWARD,
Judge.

Entered nunc pro tunc as of December 13th, 1933.

50 And afterwards, to wit, on the 16th day of February, 1934, nunc pro tunc as of December 13, 1933, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

Entered 16, 193 nunc pr tunc as Dec. 13,

51 • • (Caption) • •

This Cause Coming On To Be Heard upon the motion of the defendant herein, by Ashcraft & Ashcraft, his solicitors, and it appearing that the above cause was tried before this court on stipulation between the parties that a jury be waived and the issues be tried by the court without a jury and a trial of the issues of this cause having been had and the court having heretofore, on the 13th day of December, 1933, made certain findings of fact herein with its conclusions of law thereon, which findings of fact and conclusions of law were embodied in the Opinion of the court announced and filed in this cause, and it appearing that said findings of fact and said conclusions of law may be insufficient in form and may not appear as a part of the record of this cause;

It Is Hereby Ordered that a finding of facts in this cause with the conclusions of law of the court thereupon, conformable to the Opinion of the court heretofore filed herein, be prepared, and

It Appearing that a finding of facts with the conclusion
52 of law of the court thereupon, conformable to the Opinion of the court herein, heretofore filed, has been prepared and is presented herewith, and the court having examined the same and it appearing that they are the findings of fact and the conclusions of law heretofore made by the court on the 13th day of December, 1933;

It Is Hereby Ordered that said findings of fact and conclusions of law presented herewith be filed nunc pro tunc as of December 13th, 1933, and made a part of the record of this cause.

Enter:
CHARLES E. WOODWARD,
Judge.

Entered nunc pro tunc as of December 13th, 1933.

red Dec. 1933.

34 And afterwards, to wit, on the 29th day of December, 1933, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

Order For Judgment.

35 • • (Caption) • •

ORDER FOR JUDGMENT.

This cause having come on to be heard by the Court and a jury having been waived by both parties hereto and testimony having been taken and witnesses examined on behalf of both parties, and Winston, Strawn & Shaw, Attorneys for the plaintiff, and Ashcraft and Ashcraft, Attorneys for the defendant, having been duly heard and due deliberation having been had, the Court, being now fully advised in the premises, finds the issues for the plaintiff and assesses his damages at the sum of Fourteen Thousand Eight Hundred Sixty-four Dollars and Fifty-six Cents ($14,864.56), and it is hereby ordered that the Clerk of this Court enter judgment on said finding in favor of the plaintiff and against the defendant for said sum of Furteen Thousand Eight Hundred Sixty-four Dollars and Fifty-six Cents ($14,864.56), with costs of suit.

Enter:

CHARLES E. WOODWARD,
Judge.

Dated December 29, 1933.

1 Feb. 7, 34.

36 And on, to wit, the 7th day of February, 1934 came the Defendant by his attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

37 • • (Caption) • •

PETITION FOR APPEAL.

Now Comes, Harry E. Hallenbeck, Receiver of South Ashland National Bank, defendant herein, and says that on the 29th day of December, A. D. 1933, this Court entered a judg-

ment herein in favor of the plaintiff, W. F. Leimert, Receiver of Central Manufacturing District Bank, and against this defendant, in which judgment and the proceedings had prior thereunto in this cause, certain errors were made to the prejudice of this defendant, all of which will more fully appear from the Assignment of Errors which is filed with this Petition.

Wherefore, this defendant prays an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, for the correction of errors so complained of and that a transcript of the record, proceedings and papers in said cause, duly authenticated may be sent to the said Circuit Court of Appeals.

ASHCRAFT & ASHCRAFT,
Attorneys for Defendant.

38 And on, to wit, the 7th day of February, 1934 came the Defendant by his attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit: Filed Feb 1934.

39 • • (Caption) • • •

ASSIGNMENT OF ERRORS.

Now Comes, Harry E. Hallenbeck, Receiver of South Ashland National Bank, defendant in the above entitled cause, and assigns errors in the trial and decision of said District Court in said cause as follows:

1. Said court erred in overruling defendant's motion to find the issues for the defendant, made at the close of plaintiff's case.

2. Said court erred in concluding that the checks in question were not paid by the Central Bank on April 23, 1932.

3. Said court erred in concluding that the checks in question were not paid by the Central Bank on April 25, 1932.

4. Said court erred in concluding that the action of the First National Bank in charging the account of the Central Bank and in crediting the account of the Ashland Bank with the proceeds of the check of Two Thousand Six Hundred Dollars ($2600.00), did not constitute payment of said check.

40 5. Said court erred in concluding that the notice given by Central Bank to the Ashland Bank on Monday, April

25, 1932, was in compliance with Section 102 of the Negotiable Instruments Law, and fixed the liability of the Ashland Bank to reimburse the Central Bank for the amount of the checks.

6. Said court erred in finding the issues for the plaintiff.

7. Said court erred in concluding judgment should be entered in favor of the plaintiff and against the defendant in the sum of Fourteen Thousand Eight Hundred Sixty Four and 56/100ths Dollars ($14,864.56) and costs of suit.

ASHCRAFT & ASHCRAFT,
Attorneys for Appellant, Harry E. Hallenbeck, Receiver of South Ashland National Bank.

Filed Feb. 7, 34.

41 And afterwards, to wit, on the 7th day of February, 1934, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge appears the following entry, to wit:

ORDER.

42 • • (Caption) • •

Order

Comes now, the defendant, by Ashcraft & Ashcraft, his attorneys, and also came the plaintiff, by Winston, Strawn & Shaw, his attorneys, and thereupon the defendant filed herein and presented to the Court his Petition for an appeal to the Circuit Court of Appeals of the United States for the Seventh Judicial Circuit, and also an Assignment of Errors intended to be urged by him, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, would be sent to said Circuit Court of Appeal and that such other and further proceedings may be had herein as may be proper in the premises;

On consideration whereof, the Court does allow an appeal herein to the United States Circuit Court of Appeals for the Seventh Judicial Circuit;

Dated February 7-1934.

CHARLES E. WOODWARD,
Judge.

53 (Caption)

Filed Feb. 1934.

NOTICE.

To The Clerk of Said Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the 7th Judicial Circuit, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following papers and matters of record in said cause, to-wit:

Placita,
Summons and Return,
Amended Declaration;
Answer and Affidavit of Defense,
Findings of Fact and Conclusions by the court dated December 13th, 1933,
Order for Judgment,
Petition for Appeal,
Assignment of Errors,
Order Allowing Appeal,

54 Order entered February 16, 1934 that Findings of Fact with Conclusions of Law be prepared and filed nunc pro tunc as of December 13th, 1933 and made part of record,
Findings of Fact and Conclusions of Law entered February 16, 1934 nunc pro tunc as of December 13th, 1933,
Citation.

Respectfully,
ASHCRAFT & ASHCRAFT,
Attorneys for Appellant.

Service of the above praecipe accepted and acknowledged this 16th day of February, A. D. 1934.

WINSTON, STRAWN & SHAW,
Attorneys for Appellee.

Endorsed: Filed February 20, 1934 Charles M. Bates, Clerk.

55 Northern District of Illinois } ss:
Eastern Division }

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete

transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled W. F. Leimert, Receiver Central Manufacturing District Bank vs. Harry E. Hallenbeck, Receiver of South Ashland National Bank, No. 41749 as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 27th day of February, A. D. 1934.

CHARLES M. BATES,
Clerk.

(Seal)

56 United States of America } ss.

The President of the United States, To W. F. Leimert, Receiver of Central Manufacturing District Bank, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to order granting appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Harry E. Hallenbeck, Receiver of South Ashland National Bank, is Appellant and you are Appellee to show cause, if any there be, why the judgment rendered against the said Appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles E. Woodward, Judge of the District Court of the United States, this 7th day of February, in the year of our Lord one thousand nine hundred and thirty four.

CHARLES E. WOODWARD,
U. S. District Judge.

Service of a copy of the foregoing citation is acknowledged this 15th day of February, 1934.

WINSTON, STRAWN & SHAW,
Attorneys for W. F. Leimert, Receiver of Central Manufacturing District Bank.

(Endorsed:) • • (Caption) • • Citation Filed Feb 20 1934 Charles M. Bates Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 28, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the sixteenth day of March, 1934, on which the following entitled cause was heard and determined:

Harry E. Hallenbeck, Receiver of South Ashland National Bank,

Appellant,

vs.

W. F. Leimert, Receiver of Central Manufacturing District Bank,

Appellee,

No. 5185, October Term, 1934, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of October, A. D. 1934.

(Seal)

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit, on the third day of October, 1933, of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-Three, and of our Independence the One Hunderd and Fifty-Eighth.

Harry E. Hallenbeck, Receiver of South Ashland National Bank,
5185 *vs.*
W. F. Leimert, Receiver of Central Manufacturing District Bank.

Appeal from the District Court of the United States for the Northern District of Illinois; Eastern Division.

And afterwards, to-wit: On the fifth day of March, 1934, there was filed in the office of the clerk of this court, an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5185. October Term, 1933.

Harry E. Hallenbeck, Receiver of South Ashland National Bank,

Appellant,

vs.

W. F. Leimert, Receiver of Central Manufacturing District Bank,

Appellee.

The clerk will enter my appearance as counsel for appellant.

CARROLL J. LORD,
134 So. La Salle St.,
Chicago, Illinois.

Endorsed: Filed March 5, 1934. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the seventh day of March, 1934, there was filed in the office of the clerk of this court, an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5185. October Term, 1933.

Harry E. Hallenbeck, Receiver of South Ashland National Bank,

Appellant,

vs.

W. F. Leimert, Receiver of Central Manufacturing District Bank,

Appellee.

The clerk will enter my appearance as counsel for appellee.

DANIEL M. HEALY,
111 W. Washington St.,
Chicago, Illinois.

Endorsed: Filed March 7, 1934. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the fourth day of May, 1934, there was filed in the office of the clerk of this court, a Notice to add cause to April Calendar, which said Notice is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

April Term, A. D. 1934.

Harry E. Hallenbeck, Receiver of South Ashland National Bank, *Appellant,*
vs.
W. F. Leimert, Receiver of Central Manufacturing District Bank, *Appellee.*
} No. 5185.

To Daniel M. Healy, 111 W. Washington St., Chicago, Attorney for Appellee:

Please Take Notice that on Friday, the 4th day of May, A. D. 1934, at the hour of 10 o'clock A. M., or as soon thereafter as the cause cay be heard, we shall appear before the Honorable Samuel Alschuler, one of the Judges of the above entitled Court, in Room 752 of the Federal Building, Chicago, and shall ask that the above entitled cause be set for hearing on the April calendar of this Court, at which time and place you may appear if you so see fit.

ASHCRAFT & ASHCRAFT,
Attorneys for Appellant.

Received a copy of the foregoing notice, this 2nd day of May, A. D. 1934.

DANIEL M. HEALY,
Attorney for Appellee.

Endorsed: Filed May 4, 1934. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the fourth day of May, 1934, the following further proceedings were had an entered of record, to-wit:

Friday, May 4, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Samuel Alschuler, Circuit Judge.

Harry E. Hallenbeck, Receiver, etc.
5185 *vs.*
W. F. Leimert, Receiver, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellant, It is now here ordered that this cause be, and the same is hereby set down for hearing on May 16, 1934.

And afterwards, to-wit: On the sixteenth day of May, 1934, the following further procedeings were had and entered of record, to-wit:

Wednesday, May 16, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

Harry E. Hallenbeck, Receiver, etc.
5185 *vs.*
W. F. Leimert, Receiver, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Russell F. Locke, counsel for appellant, and by Mr. Daniel M. Healy, counsel for appellee, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the thirtieth day of June, 1934, there was filed in the office of the clerk of this court, the opinion of the court, which said opinion is in the words and figures following:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5185. October Term, 1933, April Session, 1934.

Harry E. Hallenbeck, Receiver of South Ashland National Bank, *Appellant*,
vs.
W. F. Leimert, Receiver of Central Manufacturing District Bank, *Appellee*.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

June 30, 1934.

Before ALSCHULER, SPARKS, and FITZHENRY, *Circuit Judges*.

FITZHENRY, *Circuit Judge*. Appellant is the receiver of the South Ashland National Bank and appellee the receiver of the Central Manufacturing District Bank. For convenience, the two banks will hereafter be referred to as the "Ashland Bank" and the "Central Bank." The action was brought by the receiver of the Central Bank to recover moneys procured by the Ashland Bank by depositing for collection five checks aggregating $13,733.00. A jury was waived and the trial court made findings of fact and conclusions of law and entered judgment against the defendant for $14,864.56, from which this appeal was taken. No bill of exceptions was signed and we are therefore limited on this appeal to the question of whether the findings of fact, which were made a part of the record, justify the judgment.

The trial court found that one James E. Hodgkinson was,

during March and April, 1932, a vice president of Hodgkinson & Durfee, Inc., and also vice president, a director, and owner of one-fourth of the stock, of the Ashland Bank. Hodgkinson & Durfee had an account at the Central Bank. On March 26, 1932, Hodgkinson drew four checks of the corporation, aggregating $12,183.92, on the Central Bank, payable to the order of the Ashland Bank, and delivered them to the Ashland Bank on the same day. On April 23, 1932, Hodgkinson drew an additional check of the corporation upon the Central Bank for $1,550.00, payable to himself, and on the same day he endorsed and delivered the check to the Ashland Bank. The four checks of March 26, 1932, were carried on the books of the Ashland Bank as assets of the bank until Saturday, April 23, 1932, when three of them and the one dated April 23, 1932, were deposited in the Federal Reserve Bank of Chicago. The fifth check, for $2600.00, dated March 26, 1932, was forwarded to the First National Bank of Chicago for collection. Early on Monday morning, April 25, 1932, the four checks sent to the Federal Reserve Bank for collection were turned in to the Chicago Clearing House Association by the Federal Reserve Bank. In accordance with the rules of the Clearing House the Central Bank, by its check, settled the balance due the Clearing House, and received the checks in question deposited with the Federal Reserve Bank of Chicago, about 11:30 A. M., from a messenger of the Chicago Clearing House Association. Some time early in the afternoon, but after the "Clearing House" balance had been settled, the Central Bank learned that the payment of these checks would create an overdraft in the account of Hodgkinson & Durfee.

The check for $2,600.00 was never presented at the Clearing House. The First National Bank, to which it was sent for collection by the Ashland Bank, carried an account of the Central Bank as well as the Ashland Bank. It charged the amount of this check to the Central Bank and credited it to the account of the Ashland Bank and sent the check out by messenger to the Central Bank some time after noon. As soon as the Central Bank learned of the overdraft that would be caused in the corporation's account if these five checks were paid, it notified, Hodgkinson by telephone and, at 9:30 o'clock the next morning, returned the checks to the Ashland Bank and demanded reimbursement. This was refused by the bank, which had received and kept the proceeds of the five checks.

During this time, the Federal Reserve Bank of Chicago and

the First National Bank of Chicago were members of the Chicago Clearing House Association, while the Central Bank was an affiliated member of the association. A rule of the Chicago Clearing House Association in force at that time reads:

> "In order that the member banks presenting such items may have an opportunity to give special instructions as to the protest of unpaid items, that notice of non-payment of any such items drawn on banks * * * which are * * * affiliated with members of the association * * * and which have their places of business located * * * on 12th Street or south thereof, be given by telephone before two-thirty o'clock (2:30) P. M. of the same day to the member banks presenting such items through the Clearing House * * *."

Upon these facts the trial court found that the checks in question were not paid by the Central Bank on April 23, 1932, and appellant assigns this as error. It is conceded by both parties that if payment were actually made by the bank on which the checks were drawn (in this case the Central Bank) or if, instead of actual payment, an unconditional credit had been given, then, though it were later discovered that there were insufficient funds on deposit in the account of the maker to cover the checks, the payment would be absolute and irrevocable. The fact that the Central Bank gave its check in settlement of the Clearing House balance and that the four checks went to make up a portion of this balance, does not in itself constitute final and irrevocable payment. Neither did the exchange of credits on the books of the First National Bank constitute final and irrevocable payment by the Central Bank of the checks there in question. Brady on Bank Checks (2nd Ed.) 502; *Schneider* v. *Bank of Italy*, 194 Pac. 1021; *Columbia-K. Trust Co.* v. *Miller*, 215 N. Y. 191; *Hentz* v. *National City Bank*, 144 N. Y. 979. The method of transacting business followed by the Clearing House Association contemplates that the members will immediately examine the various items which go to make up the balance and only the subsequent lapse of time without electing to dishonor the check causes the settlement to become final. In the case of members of the Clearing House, the time within which notice must be given is fixed by agreement. In the case of banks not members of the Clearing House, the provisions of the Negotiable Instruments law must govern as to what length of time may elapse before the tentative payment becomes final and irrevocable.

Appellant argues that since the Central Bank never returned the checks to the Clearing House and made no attempt to hold the Clearing House Association, the Federal Reserve Bank or the First National Bank accountable, the Clearing House settlement became final upon the lapse of time fixed by the rules. We cannot agree with this position. The Ashland Bank was not a member of, or affiliated with, the Clearing House Association and is vested with no rights based upon its rules. 1 Morse on Banks and Banking (6th Ed.) 810; *National Exchange Bank* v. *Ginn & Co.*, 114 Md. 181; Brady on Bank Checks (2nd Ed.) 503; 8 Michie on Banks and Banking, 165. In this respect the case is distinguishable from *Preston* v. *Canadian Bank of Commerce*, 23 F. 179.

The Central Bank having elected to recover from the Ashland Bank directly, all that was necessary to bring the giving of notice of dishonor within the provisions of the Negotiable Instruments Law was that notice be given "before the close of business hours on the day following." (Cahill's Ill. Rev. Stat. 1933, Chap. 98, Sec. 124.) In the instant case the checks were tendered back to the Ashland Bank and demand for reimbursement made when the bank opened on the day following. The District Court properly held that the checks in question were not paid by the Central Bank on April 23, 1932. The notice given by the Central Bank to the Ashland Bank was in compliance with the terms of the Negotiable Instruments Law and the Ashland Bank was properly held liable to reimburse the Central Bank for the amount of the checks.

The judgment of the District Court is

AFFIRMED.

Endorsed: Filed June 30, 1934. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the thirtieth day of June, 1934, the following further proceedings were had and entered of record, to-wit:

Saturday, June 30, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

Harry E. Hallenbeck, Receiver of South Ashland National Bank,
5185 *vs.*
W. F. Leimert, Receiver of Central Manufacturing District Bank.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby affirmed with costs, and interest from the date of the judgment of said District Court until paid, at the same rate that similar judgments bear in the Courts of the State of Illinois.

And afterwards, to-wit: On the twentieth day of July, 1934, there was filed in the office of the clerk of this court, a petition for a rehearing, which said petition for a rehearing is not copied here.

And afterwards, to-wit: On the twenty-eighth day of September, 1934, the following further proceedings were had and entered of record, to-wit:

Friday, September 28, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

Harry L. Hallenbeck, Receiver, etc.
5185 *vs.*
W. F. Leimert, Receiver, etc.

} Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

And afterwards, to-wit: On the twenty-ninth day of September, 1934, the folowing further proceedings were had and entered of record, to-wit:

Saturday, September 29, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. William M. Sparks, Circuit Judge.

Harry E. Hallenbeck, Receiver, etc.
5185 *vs.*
W. F. Leimert, Receiver, etc.

} Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day comes counsel for appellant and presents a motion for a stay of the Mandate of this court, pending a petition to the Supreme Court of the United States for a writ of certiorari.

On Consideration Whereof: It is now here ordered that the Mandate in this cause be, and the same is hereby stayed until the further order of this court.

It is further ordered that counsel for appellant proceed with diligence and promptly file the petition for a writ of certiorari in the Supreme Court of the United States and, upon the filing of said petition file in this court proof of the filing of said petition in said court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 31 to 40, inclusive, contain a true copy of the proceedings had and papers filed (excepting briefs of counsel and stipulations and orders pertaining to the filing thereof, and the petition for a rehearing and the answer thereto, in the case of

Harry E. Hallenbeck, Receiver of South Ashland National Bank,

Appellant,

vs.

W. F. Leimert, Receiver of Central Manufacturing District Bank,

Appellee,

No. 5185, October Term, 1934, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of October, A. D. 1934.

(Seal)

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 21, 1935.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.